

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JEFFREY STEPHENS,

14 Defendant.

CASE NO. CR21-0129-JCC-1

ORDER

15 This matter comes before the Court on Defendant's motion to compel discovery (Dkt.  
16 No. 82). Having thoroughly considered the parties' briefing and the relevant record, the Court  
17 finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained  
18 herein.

19 During the investigatory stage of this case, undercover agents ("UC") recorded  
20 conversations with Defendant that are undisputedly a central component of the Government's  
21 case. (Dkt. No. 87 at 3.) The Government provided Defendant with copies of these audio  
22 recordings. (*Id.* at 4.) However, Defendant asserts that "for at least two meetings with the UC,  
23 the ... recordings omit a conversation for which he has a specific recollection." (Dkt. No. 82 at  
24 4.) Therefore, Defendant would like to have his expert make a sample recording directly from  
25 the recording device. (*Id.*) In response, the Government argues that Defendant has failed to make  
26 the required *prima facia* showing of materiality for this request. (Dkt. No. 87 at 5.)

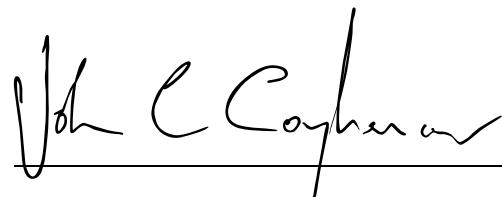
1       Upon a defendant's request, the Government must provide access to items that are  
2 "material to preparing [a] defense." Fed. R. Crim. P. 16(a)(1)(E)(i); *see also* W.D. Wash. Local  
3 Crim. R. 16(a)(2). Information is material if it is helpful to a defendant in preparing a defense.  
4 *United States v. Santiago*, 46 F.3d 885, 893 (9th Cir. 1995). If a party fails to provide material  
5 information, the Court may compel a party to comply with the rules of discovery. Fed. R. Crim.  
6 P. 16(d)(2); *see also* W.D. Wash. Local Crim. R. 16(e).

7       Defendant's request relies on a proffer that the audio files are missing conversations he  
8 distinctly recalls. (Dkt. No. 93 at 5.) Defendant's proffer satisfies the low threshold for  
9 materiality. *See United States v. Soto-Zuniga*, 837 F.3d 992, 1003 (9th Cir. 2016). In granting  
10 this motion, the Court does not lend credence to the claim that the Government may have altered  
11 evidence. Rather, the Court merely comports with Defendant's basic constitutional right to  
12 directly examine the electronic evidence that is leveled against them. *See United States v.*  
13 *Budziak*, 697 F.3d 1105 (9th Cir. 2012); *United States v. Rosenberg*, 299 F. Supp. 1241, 1246  
14 (S.D.N.Y. 1969); *United States v. Dioguardi*, 428 F.2d 1033, 1038 (2d Cir. 1970). The  
15 Government's concerns regarding the handling of sensitive technology used by law enforcement  
16 officers can be assuaged by the conditions agreed upon by Defendant. (Dkt. No. 93 at 8.)

17       Accordingly, Defendant's motion to compel (Dkt. No. 82) is GRANTED subject to the  
18 conditions outlined in the reply brief. (Dkt. No. 93 at 8–9.)

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20       DATED this 23rd day of March 2023.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE